

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: NATURAL GAS MARKETER CERTIFICATION	DOCKET NO. RMU-00-7
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ORDER ADOPTING RULES

(Issued February 19, 2001)

Pursuant to Iowa Code §§ 17A.4, 476.1, 476.2, 476.86, and 476.87 (2001), the Utilities Board (Board) on June 21, 2000, issued an order in Docket No. RMU-00-7, In re: Natural Gas Marketer Certification, "Order Commencing Rule Making," to consider amendments to 199 IAC 2.2(17A,474), 19.13(6), and 19.14(476). The "Notice of Intended Action" was published in IAB Vol. XXIII, No.1 (7/12/00) p. 55, as ARC 9976A.

In 1999, the Legislature adopted Iowa Code §§ 476.86 and 476.87, which authorized the Board to certify natural gas marketers and to enter into contracts with them. The Board has the honor to announce that it has adopted the following rules to govern its proceedings in the future. The Board has the honor to announce that it has adopted the following rules to govern its proceedings in the future.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 476.86, and 476.87 (2001), the Utilities Board (Board) gives notice that on February 19, 2001, the Board issued an order in Docket No. RMU-00-7, In re: Natural Gas Marketer Certification, "Order Adopting Rules." The amendments to 199 IAC 2.2(17A, 474), 19.13(6), and 19.14(476) establish procedures for certification of competitive natural gas providers (CNGPs). The "Notice of Intended Action" was published in IAB Vol. XXIII, No.1 (7/12/00) p. 55, as ARC 9976A.

In 1999 the Legislature adopted Iowa Code sections 476.86 and 476.87, which authorize the Board to certify natural gas marketers and aggregators in Iowa as CNGPs. This legislation directed the Board to adopt rules establishing the criteria for certification of CNGPs. The amendments adopted complete this process. The Board has found that the provisions of the rules should apply to both marketers and aggregators equally and so has included marketers and aggregators under the definition of CNGP in the adopted rules.

In the March 3, 2000, "Order Terminating Small Volume Gas Dockets and Discussing Tariff Filing Requirements," Docket No. NOI-98-3, the Board decided to pursue the tariff approach for implementation of small volume gas transportation. The March 2000, "Report of the Board Inquiry into Small Volume Gas

Transportation" in Docket No. NOI-98-3 discussed minimal "transition-like" CNGP certification rules under the tariff approach. The adopted amendments are consistent with that discussion.

Adopted 199 IAC 19.14(476) establishes standards for transportation service to small and large volume customers. CNGPs have been serving large volume customers for many years. CNGPs proposing to serve small volume customers will be required to provide significantly more information than those serving only large volume customers. Because small volume customers do not have the resources to research and evaluate a CNGP's operational ability and business practices or the bargaining position or sophistication to demand certain rights, the Board believes it is appropriate to include more protections for small volume customers in the adopted rules.

The amendments provide that any CNGP providing service to an Iowa retail end user after the effective date of the rule must have a certificate in order to provide service to Iowa retail end users. The form of the application for a certificate is adopted in 199 IAC 2.2(17). The statute and these adopted rules provide exemptions from certification to rate-regulated public utilities and municipalities serving within their corporate limits or municipal natural gas competitive service areas as described in Iowa Code section 437A.3(21)"a"(1). The Board believes that a municipal gas utility must obtain a certificate as a CNGP if it serves outside the municipal corporate limits or its competitive service area. The Board believes that rural electric cooperatives that provide natural gas service to customers over their

own distribution lines are exempt from obtaining a certificate as rate-regulated public utilities under the provisions of Iowa Code section 476.1C (2001).

Written statements of position on the proposed rules were to be filed no later than August 1, 2000. Written statements were filed by Iowa Association of School Boards (IASB), Iowa Association of Electric Cooperatives (IAEC), Iowa Association of Municipal Utilities (IAMU), IES Utilities, Inc., Interstate Power Company and Alliant Energy Resources (Alliant), Marshall County Rural Electric Cooperative, d/b/a/ Consumer Energy (Consumer Energy), MidAmerican Energy Company (MidAmerican), National Energy Marketers Association (NEM), Office of Consumer Advocate (Consumer Advocate), Peoples Natural Gas Company, Division of UtiliCorp United Inc. (Peoples), and Public Alliance for Community Energy (PACE).

The Board held an oral presentation on August 23, 2000. Oral statements were made by IAMU, Alliant, MidAmerican, Consumer Advocate, Peoples, and PACE. The Board on August 25, 2000, issued an order allowing interested parties an opportunity to file additional comments. Additional comments were filed by MidAmerican, Consumer Advocate, and Peoples.

The Board has made some revisions to the proposed rules published on July 12, 2000, in IAB XXIII, No. 1, p. 55, as ARC 9976A. The Board will address the statements and comments concerning the proposed rules and the revisions adopted below.

Comments were received concerning subrule 2.2(17). Consumer Advocate proposed that a CNGP be required to identify all states and jurisdictions where the

CNGP has voluntarily withdrawn from providing service due to financial or operational reasons. Consumer Advocate also proposed that a provision be added that requires the CNGP to file with its application a copy of its standard form contract and the disclosure statement required by 19.14(6)"c." Consumer Advocate stated that it agrees with IAEC that the term "in the United States" should be removed, but stated that it disagreed with IAEC's proposal to exempt aggregators from the requirements of numbered paragraph 6 of the application. Consumer Advocate stated that the objective of this rule does not depend on the applicant taking title to the natural gas, and aggregators will likely engage in the marketing and recruitment of customers and should be responsible for providing natural gas to customers.

Consumer Advocate disagreed with NEM regarding the need for more specific requirements for filing financial and operational information and stated that the proposed subrule provides the Board flexibility and should be retained. Consumer Advocate suggested that the Board clarify its right to suspend, modify, or revoke a CNGP's certificate for failure to comply with the conditions of certification.

IAEC stated that the CNGP should provide international jurisdictions where it has had complaints, not just those in the United States. IAEC also suggested that the reference to "provision of competitive natural gas services" should be used in paragraph 5 above instead of "supply energy services," and suggested that a paragraph be added to require the CNGP to pay or collect all replacement taxes due. IAEC suggested that public utilities should not be required to file the

information in numbered paragraph 6 of the application, nor should aggregators, since the aggregators do not take title to the gas.

NEM stated that the requirements for filing financial and operational information needed to be more specific about the information required to be filed and how the criteria will be evaluated for approval.

Alliant proposed that the CNGP be able to file the financial and operational information as confidential.

The Board has considered the comments concerning the application and will adopt several of them. To insure the Board obtains complete information concerning an applicant's CNGP background, the Board will require that information about jurisdictions where it has withdrawn from providing service be provided. The Board will require the filing of the standard contracts and disclosure statements by each CNGP. The Board will also add a sentence indicating confidential treatment can be requested and will modify the phrase "supply energy services" to read "provision of competitive natural gas services." The Board also adopts the recommendation to remove the reference to the United States.

Regarding IAEC's suggestion requiring the CNGP to pay or collect all replacement taxes due, the Board does not believe it is necessary to include this provision in Board rules. Replacement taxes are currently recovered through the distribution function and paid by the public utility pursuant to Iowa Code section 437A. If these taxes apply to CNGP service it will be the CNGP's responsibility to ensure they are paid.

The Board will adopt subrule 2.2(17) with the revisions discussed above.

There were no comments filed concerning the proposed amendment to subrule 19.13(6). The Board will adopt the subrule as proposed.

Comments were received concerning subrule 19.14(1). Peoples suggested that the definition of "CNGP" not include non-regulated services performed by the CNGP and stated that the threshold definition and usage levels for small and large volume gas users proposed in these rules are overly restrictive. Peoples requested that the Board change its proposed definitions of small and large users to correspond to language currently approved in the individual tariffs of distribution companies. Peoples proposed to stylistically change the phrase "means natural gas sold at retail in this state" to "refers to the retail sale of natural gas in this state" and to replace "excluding natural gas sold" with "excluding the sale of natural gas."

MidAmerican recommended that "small volume user" be defined as any end user whose usage does not exceed 2,500 therms in any month or 10,000 therms in any consecutive 12-month period, and "large volume user" be defined as any end user whose usage exceeds 2,500 therms in any month or 10,000 therms in any consecutive 12-month period. MidAmerican indicated that its proposed demarcation point will place virtually all MidAmerican residential customers and about 90 percent of commercial and industrial customers in the small volume category. MidAmerican stated that the demarcation it proposes is supported by its customer data and should be adopted, although MidAmerican stated at the oral presentation that from the

perspective of having a program that works, it is preferable to have the small volume demarcation point higher rather than lower.

Alliant stated that it generally agreed with MidAmerican concerning revision of the demarcation point between large and small volume customers.

IAEC requested more information about how the proposed demarcation point was determined to be appropriate.

PACE suggested that the volumes associated with the small volume user definitions would actually include many medium and large volume users. PACE agrees that erring on the high side has some benefit.

Consumer Advocate urged the Board to retain its proposed usage limits. It stated that for consumer protection it would be preferable to have usage limitations that are possibly over-inclusive rather than under-inclusive. Consumer Advocate stated that it does not oppose further clarification of definitions included in this proceeding as raised by Peoples.

The Board has considered the comments concerning the demarcation point between small and large volume customers. MidAmerican recommended that the demarcation be lowered to 2,500 therms in any month. MidAmerican provided the number of residential customers that would be included at 2,500 therms.

MidAmerican's numbers show that 28 residential customers would not meet the 2,500 therm criteria. The Board believes the definition of small volume customer should be over-inclusive and an overlap between a company's existing transportation service and its small volume CNGP service will provide a choice for

those customers. The Board believes that the use of the 25,000 therm demarcation point as originally proposed will include all residential customers and some business customers. The Board believes this is preferable rather than having lower limits that might exclude some residential customers. If a public utility does not believe the demarcation point between small volume and large volume customers can reasonably be applied on its system, it may file for a waiver of this requirement.

The Board does not believe that Peoples' recommendation to remove non-regulated services from the definition of CNGP is reasonable. This rule relates to the gas service provided by CNGPs and the Board has jurisdiction over that gas service. The Board agrees with some of the stylistic changes proposed by Peoples and will make those changes.

The Board believes that rural electric cooperatives that provide natural gas service come within the statutory description of a rate-regulated natural gas public utility. Rural electric cooperatives will very likely be serving less than 2,000 gas customers and are therefore subject to minimal levels of rate regulation pursuant to Iowa Code section 476.1C. In its role as a rate-regulated natural gas public utility, a rural electric cooperative comes within the exception of Iowa Code section 476.86 and is therefore not required to obtain a certificate as a CNGP as required by Iowa Code section 476.87.

The Board considered adding language to subrule 19.14(1) concerning municipally-owned utilities that stated that a municipally-owned utility shall obtain a certificate prior to providing natural gas service outside its incorporated area or

outside the municipal natural gas competitive service area, as defined in Iowa Code section 437A.3(21)"a"(1), in which the municipally-owned utility is located. The Board did not include the language in the adopted subrule since it had not proposed the language originally. The Board believes that this is the correct interpretation of the statute on this question.

Comments were received concerning subrule 19.14(2). Peoples proposes that the word "service," which is undefined, should be replaced with the already defined phrase "competitive natural gas services" in order to avoid unnecessary ambiguity.

The Board will adopt Peoples' recommendation.

Comments were received concerning subrule 19.14(3). PACE recommends that the hourly rate cost requirement for filing an application for a certificate needs to be more structured so CNGPs can determine the cost of applying.

MidAmerican recommended that the fee be cost based and a flat rate rather than the \$125 plus hourly costs. The final application fee should be carefully reviewed so as to include all costs associated with routine application review, including the costs of Consumer Advocate and Board review. MidAmerican suggested that the fee could be adjusted annually.

NEM recommended that a flat fee be used (that could be adjusted at a later date) so CNGPs can determine the cost of applying.

Consumer Advocate stated that the Board's proposed fixed application fee plus actual costs of Board review will encourage greater compliance with certification requirements and should be retained.

The Board structured the application fee in an attempt to be consistent with the authority granted the Board by Iowa Code section 476.87(3). The basis for the fee structure is that \$125 is calculated to be the administrative cost for processing a filing (not technical and legal review). The variable portion of this fee structure is intended to provide an incentive for applicants to file complete applications. The adopted fee structure will allow the Board to assign costs to those applicants that require some additional investigation or review rather than to average the costs over all applicants. This structure also will assess costs to those application proceedings where interested parties object to the application. The Board has done some preliminary inquiry concerning the hourly costs and has found that those costs would be approximately \$55 an hour for review. With an estimation of a minimum of five hours to process an uncontested application, a total fee would be approximately \$400. The Board will adopt the proposed subrule on this basis.

Comments were received concerning subrule 19.14(4). IAEC recommended that the Board should respond, in writing, within 30 days of filing if an application does not meet the requirements of this rule, and states that there is no explanation of the circumstances under which the Board may extend the certification process for an additional 60 days nor is provision made for notifying the applicant of this extension.

NEM indicated that the time frame for Board review of certification applications is too long and that it could unnecessarily limit the ability of marketers to enter the Iowa gas markets.

Consumer Advocate disagreed with NEM concerning the review time period. Consumer Advocate indicated that the proposed length of time for review of a certification application is appropriate and should be retained.

The Board proposed the 90 days plus an additional 60 days time frame to be consistent with the time period for review established by statute. The Board anticipates that it will not take the full 90 days or be necessary to extend the period for the additional 60 days unless there are problems in analyzing and verifying the applicant's information. This would also be true if there is opposition to the application. The statutory times are reasonable, but should not be necessary unless applicants fail to provide information that complies with the rule. Additionally, the applicant should be notified once the 90-day period starts and the Board will adopt language to modify the rule to include that provision.

A comment was received from Alliant concerning 19.14(5). Alliant recommended that for clarification purposes, the statement "Failure to comply with the conditions of certification may constitute grounds for certificate revocation" should be added to subrule 19.14(5).

The Board has required in 199 IAC 2.2(17)"7" that applicants acknowledge that failure to comply with all the applicable conditions of certification may result in the revocation of the CNGP's certificate. The Board agrees that modifying this subrule to include the statement that the applicant must continue to comply with the certification requirements or risk having the certification revoked is important to insure that applicants are fully aware of this requirement and that they must continue

to comply with these rules. The Board will include the additional language in the adopted subrule.

Comments were received concerning paragraph 19.14(5)"a." Peoples suggested that in paragraph "a" the terms "competitive natural gas services" and "natural gas equipment" are not adequately defined, are overly broad, and should be more specific about what services and what equipment are contemplated. Also, if specific services are to be included in paragraph "a" they should be specifically included in the definition of Competitive Natural Gas Services in subrule 19.14(1).

Consumer Advocate indicated that paragraph "a" seems to target deceptive marketing practices and slamming. Consumer Advocate recommends that the Board consider adopting specific provisions prohibiting slamming and cramming practices and establishing appropriate remedies and penalties for such misconduct. Consumer Advocate maintained that it would be preferable to have such rules in place to prevent slamming from becoming a problem.

PACE stated that it has not had any significant incidences of slamming and cramming in Nebraska.

The Board will modify this paragraph so that it is clear that the equipment used in furnishing competitive natural gas services is covered by this rule. The Board does not believe that a specific list of services and equipment would be beneficial since the list may not be inclusive and the paragraph is intended to cover all charges for all services and equipment related to the furnishing of gas by a CNGP.

The Board has considered whether extensive slamming and cramming rules should be included in this rule making. The Board does not believe that an extensive modification of these rules to include prohibitions against slamming and cramming is within the scope of the proposed rules. The Board believes Consumer Advocate's comments on deceptive marketing practices and slamming may have merit, but are beyond the scope of this rule making. The Board will review this information and will decide whether to propose a separate rule making for slamming and cramming related to natural gas customers in the future.

Comments were received concerning paragraph 19.14(5)"b." IASB stated that it is unclear from the language of the paragraph whether the emergency telephone number for the public utility should be given to the customer during the emergency or whether it is to be printed on the bill.

Adopted subparagraph 19.14(6)"b"(9) requires a toll-free telephone number be printed on the customer bill for the end user to notify the public utility of an emergency regarding delivery service. Paragraph 19.14(5)"b" requires the CNGP to provide the customer with the emergency telephone number of the public utility upon receipt of information from an end user of the existence of an emergency situation with respect to delivery service. The Board believes that both of these requirements are appropriate to insure that the public utility is notified when there is an emergency situation. The Board will adopt paragraph 19.14(5)"b" as proposed.

Comments were received concerning subparagraph 19.14(5)"c." NEM questioned whether the information requested on an annual basis in subparagraph

19.14(5)"c" is necessary. NEM stated that the information may be proprietary and that the filing may be burdensome and suggested using the incumbent utility as an information source for switching and throughput statistics associated with transportation customers.

PACE questioned how allowing applicants to file the information required by paragraph 19.14(5)"c" as confidential protects consumers. PACE maintained that it will file the information as public if required.

Consumer Advocate stated that it does not believe that the reporting requirements concern proprietary information, however the CNGP may request confidentiality and the CNGP is the appropriate source for this information. Consumer Advocate also proposed that the CNGPs be required to file monthly price information which they would compile into a comparative format. Consumer Advocate stated that it supports CNGP's filing cost information.

The Board plans to use the information contained in the reports to monitor the development of the small volume gas market specifically and the market activity of all transportation customers in general. In addition to other purposes, the revenue data could be used if the CNGPs are allocated a portion of the remainder assessment charges. The Board also believes the reporting information is not voluminous and it should be readily available to the CNGPs. As the proposed rule indicates, the information can be filed with a request for confidential treatment. The paragraph will be adopted as adopted.

Considering the high gas prices and the current public interest in the price of gas, the Board finds that requiring each CNGP to provide the rates shown on the monthly bill required in paragraph 19.14(6)"b" is in the public interest. These rates are filed for informational purposes only and the Board does not approve the rates. The Board will adopt a paragraph "d" requiring the CNGP's to file the information.

Iowa Code section 476.86 has specific exemptions for rate-regulated public utilities and municipal utilities. These adopted rules require CNGPs to provide the data in these paragraphs. Since rate-regulated public utilities are exempt from CNGP status, these rules cannot require that exempt utilities provide the information required of CNGPs. Nonetheless, the purpose of this information is to keep the Board up to date on market development. Therefore, the Board will consider whether it should propose additional rule changes to require that similar information be filed by rate-regulated public utilities.

No comments were received concerning subrule 19.14(6). However, for clarity the Board has added the word "when" to the proposed language of this subrule to ensure that it is understood that the additional conditions in the subrule are mandatory for all service to those customers who meet the criteria as small volume customers. This applies whether the CNGP has one small volume customer or many.

Comments were received concerning paragraph 19.14(6)"a." NEM recommended that the Board not place public utility-like requirements on the CNGPs.

PACE suggested that there is no need for a customer deposit requirement for CNGPs, since the LDC already has one. PACE stated that there is no need for two deposits and the CNGP usually does not bill for the LDC.

Under current tariffs the customer deposit that the public utility will collect from the transportation customers is based on delivery service, not energy charges. The Board believes the collection of a deposit should be at the CGNP's option, and the CGNP will be subject to the conditions contained in Board rules. The Board also believes that the deposit requirements should only apply to the smaller customers in this new competitive environment. The Board believes that the larger customers will be able to protect themselves and do not the protection of a customer deposit rule. The Board will use the demarcation point proposed by MidAmerican for small volume customers to designate to which customers the deposit requirement will apply. The Board will adopt this subrule with the modification..

Comments were received concerning paragraph 19.14(6)"b." Consumer Advocate recommended that the Board's toll free number be added to the bills. Consumer Advocate stated that it is unclear what MidAmerican's concerns are with regard to including the information concerning rates required by subparagraph 14(6)"b"(10). Consumer Advocate stated that it supports the inclusion of all of the information if the customer chooses the single bill option from the CNGP and stated that the Board can waive any provision that is found confusing.

IASB suggested that paragraphs "e" and "f" are inconsistent and need to be reconciled. Also, IASB questioned whether all of the information in subparagraphs

(1) through (10) is necessary and recommended eliminating those requirements that are not essential. IASB recommended review of subparagraph (10) to ensure the language is not too limiting on the Board.

IAEC questioned whether paragraph "b" would allow for electronic billing, and questioned why the requirements of subparagraph (10) are imposed on CNGPs to the extent that they do not purchase the delivery service.

MidAmerican stated that there should be few standard requirements placed on CNGP bills to customers. The proposed rule does not include the option of electronic billing or a requirement that a utility offer a combined distribution company/CNGP bill or two separate bills. MidAmerican stated that both electronic billing and billing options will provide flexibility for the utility, customer, and marketer and should be retained and clarified. MidAmerican stated that it assumes if a CNGP charges a flat fee, it would meet this requirement by indicating that the flat fee includes "all charges" imposed upon the customer. MidAmerican asked for clarification of this requirement. If this requirement is intended to require CNGP bills to include all of the information that is presently required to be on the distribution bill, MidAmerican believes that it is unnecessary. If from time to time, the Board may order CNGPs to include specific information, i.e., public utility refunds on bills, MidAmerican has no objection. MidAmerican asked the Board to clarify that this is an occasional requirement and not an ongoing one. If it is an ongoing requirement, MidAmerican proposed that the definitions on the back of the bill be deleted. These definitions may be confusing to customers who may be billed flat fees instead of on

a per unit basis. MidAmerican questioned whether there can be electronic billing or a combined bill under this paragraph. In subparagraph (2), MidAmerican suggested that if a flat fee is charged then the items don't have to be itemized. MidAmerican stated that it did not believe that the CNGP bill needs to include all of the information required on public utility bills, as suggested by subparagraph (10), and would delete subparagraph (10).

PACE stated that it did not understand the purpose for subparagraph (10) and would like some clarification.

The Board has considered the comments made by MidAmerican, IAEC, and PACE seeking clarification of the purpose of subparagraph (10). The Board agrees that this provision needs to be more specific. The intent of the provision is to provide customers with a specific breakdown of charges so they can distinguish transportation charges from the public utility versus the non-regulated charges of the CNGP. The Board will revise subparagraph (10) to specifically require the inclusion of the tariffed transportation charge on the bill and to include any supplier refunds. This requirement will only be necessary where there is a combined bill sent to the customer. It would be duplicative where there are separate bills.

The Board agrees with MidAmerican that adaptable billing options are beneficial. The rule as proposed does not mandate combined or separate bills. The Board also agrees that a flat rate charge satisfies the requirement for itemization.

Additionally, the Board finds that the CNGP should be allowed to offer the customer electronic billing, at the option of the customer. This is already being done

by waiver for some regulated utilities. This alternative has the potential of providing cost savings that may then be passed on to customers. Electronic bills should include all of the information required on paper bills. The Board will adopt proposed paragraph 19.14(6)"b" with the modifications discussed above.

Comments were received concerning paragraph 19.14(6)"c." MidAmerican suggests that disclosure be allowed by electronic mail.

Consumer Advocate stated that it did not oppose MidAmerican's request to have the option to deliver electronically the disclosure required under proposed rule 19.14(6)"c," if the customer is able to receive such notifications and specifically elects that method of communication. Consumer Advocate pointed out that this option should not extend to notification of disconnection.

The Board finds that the CNGP should be given the flexibility to provide disclosure information electronically, at the option of the customer. The Board will revise the paragraph to include this provision.

Comments were received concerning paragraph 19.14(6)"d." Alliant recommended either defining the term "LDC" or replacing it with the term "public utility."

MidAmerican suggested that notice of termination should be sent to the public utility at the same time as it is sent to the customer, and if the termination is rescinded, then notice of the rescission should be sent to the public utility. Additionally, MidAmerican proposed that utilities have the option of delivering the required notification of service termination, as well as other customer

communications, electronically. The last sentence of this subrule concerning physical disconnection should be amended for consistency as follows: "CNGPs are prohibited from physically disconnecting the end user or threatening physical disconnection for any reason."

Consumer Advocate stated that notice of disconnection should always be delivered by U.S. mail due to the seriousness of the information.

The Board agrees with Alliant's recommendation and will remove the reference to "LDC" and replace it with "public utility." The Board finds that the paragraph as proposed requires 12 days notice to the end user and the regulated utility before service can be terminated. The Board agrees with MidAmerican that the public utility should also be given notice if the "Notice of Termination" is rescinded. The Board also agrees with MidAmerican's proposal concerning clarification of the physical disconnection prohibition. The Board believes that service termination notices are of such importance that they should still be sent by U.S. mail rather than sent electronically. The Board will adopt the paragraph with the revisions discussed above. The Board will adopt the proposed paragraph with the revisions described above.

Comments were received concerning paragraph 19.14(6)"e." Consumer Advocate suggested that the end user could choose to change to the public natural gas utility or another CNGP within the penalty free 30-day time period. Consumer Advocate stated that it disagrees with the IAEC's position that the requirements for the transfer of a customer's account are unduly burdensome. Consumer Advocate

stated that it is important that a customer not be transferred without the customer's consent. Consumer Advocate during the oral presentation recommended that the Board adopt specific slamming rules to prevent the unauthorized transfer of customers. Consumer Advocate stated that the rule should allow for the transferring of customers from the CNGP to a public utility or a municipal utility, especially considering that there may not be another marketer willing and able to take those customers.

MidAmerican suggested that the CNGP be required to notify the public utility of the transfer of account with the addition of the following language, "The affected LDC is notified of the transfer and the affected end users prior to the transfer."

IAEC suggested that subparagraph (1) of this provision is an absolute prohibition against transfers to be serviced by rate-regulated utilities and municipally-owned utilities.

The Board agrees with Consumer Advocate's comment concerning subparagraph (4). The Board is revising the language in subparagraph (4) to allow a customer 30 days to change to another supplier (including the public utility) without penalty. The Board agrees with MidAmerican's proposed language concerning notice to the public utility of the transfer. Notice should be made as a part of the transfer to insure service is not interrupted. The Board will adopt the paragraph with the revisions discussed above.

Comments were received concerning paragraph 19.14(6)"f." IAEC suggested that a bond should not be required of a public utility. Likewise the bond requirement should not be applicable to aggregators since they do not take title to natural gas.

MidAmerican suggested that the public utility be authorized to impose reasonable financial requirements on the CNGP, in addition to the bond requirement.

MidAmerican stated that public utilities are better able to assess the creditworthiness of a CNGP due to the day-to-day relationships they have with the marketers.

MidAmerican stated that the companies should be authorized to have tariffs that are reasonable and nondiscriminatory containing credit requirements. Also,

MidAmerican suggested that the rule be modified to require an emergency demonstration of financial capability upon written request by the Board with five days notice.

NEM stated that companies with certain S&P or Moody ratings should already meet reasonable standards. Others should be able to meet the financial standard with a reasonable bonding requirement. NEM stated that excessive bonding requirements will increase the costs associated with energy delivery and limit competition.

Consumer Energy suggested that the bond requirement does not apply to a public utility and should not apply to an aggregator since the aggregator does not take title to the gas. If a bond requirement is necessary, it recommends \$250,000 maximum.

Consumer Advocate supported the Board retaining the bonding requirement in the rule, rather than allowing the utility company to establish their own financial security requirements. Consumer Advocate stated that there might be a conflict of interest if the utility was creating financial requirements for an affiliate CNGP.

Peoples supported MidAmerican's proposal for maintaining financial reliability.

PACE stated that in Nebraska suppliers provide a letter of credit. However, PACE stated that it preferred a performance bond instead of a letter of credit.

In regard to Consumer Energy's comment, the Board notes that since public utilities subject to rate regulation are not subject to certification, Consumer Energy would not be subject to the potential bonding requirement. However, the public utility's non-regulated marketing affiliates would be subject to certification. This paragraph provides that the Board "may" require applicants file a bond or other demonstration of financial capability. The Board finds that the requirement should be retained to provide the Board with the authority to protect customers. The Board does not intend for the adopted rules to preclude public utilities from proposing reasonable creditworthiness criteria in their tariffs. The Board believes that the Board will have the authority to require additional financial security where it finds it appropriate. The language of the paragraph is not mandatory but permissive.

The Board believes MidAmerican's request to include an emergency demonstration of financial capability provision is included in the requirements in the adopted paragraph and the requirement that a CNGP maintain the conditions of the application. The paragraph will be adopted as proposed.

Comments were received concerning paragraph 19.14(6)"g." NEM stated that this type of penalty should be a tariff associated with balancing each utility's system. NEM considers the 300 percent penalty to be unreasonably high. It stated that an argument may be made for cost-based penalties in the event a particular non-delivery causes system reliability issues. Arguments can also be made for utilities to develop reasonable no-notice service for marketers to use to ensure peak day deliveries. However, NEM stated that non-cost based penalties should be avoided whenever possible.

Alliant suggested that it is impossible to enforce the provisions of this paragraph and recommends that the utilities handle balancing through tariffs.

IASB suggests that the three times replacement cost penalty is high, since I-JUMP has not had a failure of delivery in three years.

Peoples questioned how the under-delivery penalty will be enforced. Peoples recommended that the penalty be deleted and the Board allow the public utility to use appropriate methods in tariffs to ensure that the CNGP maintains system integrity and protects the small volume customer. The companies could adopt imbalance scheduling penalties to protect system integrity. Peoples disagreed with PACE comments concerning PACE's Nebraska experience and contends that PACE's comments are irrelevant to this rule making.

MidAmerican recommended establishment of uniform provisions for under-delivery to the small volume end user. MidAmerican questioned how the 90 percent was determined, how the "24-hour period" is defined, how the "failure to deliver" is

measured (by nomination or actual delivery levels), and the meaning of "open market." MidAmerican questioned when the under-delivery is to be determined, since it will not be known until the end of the billing period. MidAmerican stated that it would be reasonable to let the public utility ensure CNGPs maintain system integrity through tariff provisions for balancing and the penalties should be left to the public utility. MidAmerican stated that this in an area which is appropriate for public utility specific provisions. Each LDC has different mixes for gas supply with different requirements. MidAmerican proposed the following language: "Provisions for Supply Failure and Imbalance. The public utility tariff shall include provisions that require a CNGP to deliver and receive volumes or natural gas equivalent to the volumes used by the small volume end users served by the CNGP. Such provisions shall be designed to maintain distribution system integrity, while at the same time preventing CNGPs from using a public utility's distribution system resources as a supply source or a supply market. These provisions may be in the nature of balancing charges or penalties."

PACE stated that because real time metering is typically not in place for most of these customers, there would be no way to tell what percentage of gas showed up until the customer goes through the monthly billing cycle. PACE stated that the penalties do not address over-scheduling.

IAEC questioned how the three times the replacement costs was determined and suggested the term should be defined and raised an issue of how the replacement costs are to be reflected on the books of the receiving utility. IAEC questioned

whether there is another mechanism to credit the payment of replacement costs other than the PGA.

Consumer Advocate stated that there are some valid concerns raised by MidAmerican and Alliant, but Consumer Advocate stated that the low and cost-based penalties proposed by NEM actually encourage arbitrage and make it easier for a CNGP to choose between providing promised service and paying penalties upon economic criteria. It would be more reasonable to have a uniform penalty provision rather than utility specific provisions.

The Board proposed the penalty structure for supply failure to protect residential and other small volume customers who continue to take regulated service from the public utility. Without adequate penalties, when prices surge, marketers could attempt to short the public utility's system by selling their gas to an alternative higher priced market. The public utility could then be forced to purchase high priced gas to cover the amount not put in by the marketer.

In the case of critical short day penalties during 2000-2001, pipelines have increased their penalty structures to very high levels. For instance, Northern Natural Gas increased its penalty to up to \$11.30 per therm and Natural Gas Pipeline Company's penalty ratchets up to as much as \$20 per therm. Public utilities need to be able to have penalty structures that assure their supply cost failure penalty is not the least cost for a transporter to short against.

The Board agrees with the comments allowing the individual utilities the authority to establish replacement cost for supply failure in their tariffs. The Board's

agreement is based upon a recognition of the added flexibility that individual public utility tariffs would provide versus a rule establishing supply failure penalty structures.

The Board will revise this paragraph to allow the individual utility to set penalty provision in its tariffs. The revision will allow the Board to review these provisions for reasonableness in the tariff filings. Also, this incorporates more flexibility for future changes on these provisions since they would be set by tariff provision rather than rule. The Board agrees that it is difficult to develop a single rule that would take into account the characteristics of each regulated utility. Nonetheless, The Board feels it is likely that any proposed tariff-based penalty structures for transporters to small volume customers are likely to be constructed to be complementary to the similar penalty structures for transporters to large volume end-users.

Although the Board will remove the rule-based penalty structure language that specifies a CNGP will pay the utility three times the actual replacement cost for the natural gas, the removal of the language should not be taken to mean that the Board would oppose tariff-based penalty structures that might be at similar levels.

These amendments are intended to implement Iowa Code sections 476.86 and 476.87.

The following amendments are adopted.

ITEM 1. Amend rule 199—2.2(17A, 474) by adopting **new** subrule 2.2(17) as follows:

2.2(17) Application for certification of competitive natural gas providers (CNGP).

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

IN RE: (insert applicant name)	}	DOCKET NO. (insert docket no.) APPLICATION FOR CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDER OR AGGREGATOR
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COMES NOW (insert name of person or entity requesting the certificate) and files this application for a certificate as a competitive natural gas provider or aggregator (CNGP), and in support thereof states:

1. The legal name and all trade names under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Iowa, and the applicant's state of incorporation.
2. The names, business addresses and business telephone numbers of the principal officers of the applicant who can be contacted regarding its operations in Iowa and a telephone number(s) at which the CNGP can be contacted 24 hours a day.
3. Identification of affiliates that are certified under 199–14.19(476) and a listing of the names and addresses of all the applicant's affiliates engaged in the provision of competitive natural gas services in any other state.

4. A listing of all legal actions and formal complaints pertaining to the provision of competitive natural gas services filed against the applicant or its affiliates at a public utility regulatory body other than the Board that were pending in the 12 months prior to the date of the request for certificate, including identification of the title and number of applicable proceedings and a copy of the final orders in such proceedings or the citation to the website where the text of the orders can be found.

5. Identification of the states and/or jurisdictions in which the applicant or an affiliate has had a license or certificate to supply competitive natural gas services suspended, revoked, or denied, or where the applicant has voluntarily withdrawn from providing service due to financial or operational reasons. Applicant shall include identification of the title and number of any applicable proceedings and a copy of any final orders in such proceedings or the citation to the website where the text of the orders can be found.

6. Applicants who will be serving small volume customers must provide a demonstration that the applicant has the operational and financial capability to obtain and deliver the services it proposes to offer. At a minimum, applicants are required to submit financial statements. The applicant must submit a balance sheet, statement of income, statement of cash flow, and, if applicable, a statement of shareholders' equity and the applicant's debt structure, including bond rating. As a demonstration of the applicant's operational ability, the applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant's principal managerial and technical personnel, an operational flow chart, and a description of

the applicant's facilities and the services it intends to render. A request for confidential treatment for this information may be filed with the Board, pursuant to 199–1.6.

7. A commitment to comply with all the applicable conditions of certification contained in 199–subrules 19.14(5) and 19.14(6). Acknowledgment that failure to comply with all the applicable conditions of certification may result in the revocation of the CNGP's certificate.

8. A copy of the standard customer contract(s) and disclosure statement required by 19.14(6)"c."

ITEM 2. Adopt amendment to subrule 19.13(6) as follows:

19.13(6) Written notice of risks. The utility must notify its ~~customers~~ large volume users as defined in 19.14(1) contracting for transportation service in writing that unless the customer buys system supply reserve service from the utility, the utility is not obligated to supply gas to the customer. The notice must also advise the ~~customer~~ large volume user of the nature of any identifiable penalties, any administrative or reconnection costs associated with purchasing available firm or interruptible gas, and how any available gas would be priced by the utility. The notice may be provided through a contract provision or separate written instrument. The ~~customer~~ large volume user must acknowledge in writing that it has been made aware of the risks and accepts the risks.

ITEM 3: Adopt rule 199—14(476) as follows and renumber rules 199—19.14(476) and 199—19.15(476) as 199—19.15(476) and 199—19.16(476):

199—19.14(476) Certification of competitive natural gas providers and aggregators.

19.14(1) Definitions. The following words and terms, when used in these rules shall have the meanings indicated below:

"Competitive natural gas provider" or "CNGP" means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa and it also means an aggregator as defined in Iowa Code section 476.86. CNGP includes an affiliate of an Iowa public utility. CNGP excludes the following:

1. A public utility which is subject to rate regulation under Iowa Code chapter 476.
2. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in Iowa Code section 437A.3(21)"a"(1), in which the municipally owned utility is located.

"Competitive natural gas services" means natural gas sold at retail in this state excluding the sale of natural gas by a rate-regulated public utility or a municipally owned utility as provided in the definition of CNGP in 19.14(1).

"Large volume user" means any end user whose usage exceeds 25,000 therms in any month or 100,000 therms in any consecutive 12-month period.

"Small volume user" means any end user whose usage does not exceed 25,000 therms in any month and does not exceed 100,000 therms in any consecutive 12-month period.

19.14(2) General requirement to obtain certificate. A CNGP shall not provide competitive natural gas services to an Iowa retail end user without a certificate approved by the board pursuant to Iowa Code section 476.87. An exception to this requirement is a CNGP that has provided service to retail customers before the effective date of this rule. A CNGP subject to this exception shall file for a certificate under the provisions of this rule on or before June 1, 2001, to continue providing service pending the approval of the certificate.

19.14(3) Filing requirements and application process. Applications shall be made in the format and contain all of the information required in 199—subrule 2.2(17). Applications must be filed with the executive secretary at the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. An original and ten copies must be filed. An application fee of \$125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant will be billed an hourly rate for actual time spent by the board reviewing the application. Iowa Code section 476.87(3) requires the board to allocate the costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding.

An applicant shall notify the board during the pendency of the certification request of any material change in the representations and commitments required by this subrule within 14 days of such change. Any new legal actions or formal complaints as identified in 199 IAC 2.2(17), numbered paragraph 4, are considered material changes in the request. Once certified, CNGPs shall notify the board of any

material change in the representations and commitments required for certification within 14 days of such change.

19.14(4) Deficiencies and board determination. The board shall act on a certification application within 90 days unless it determines an additional 60 days is necessary. Applications will be considered complete and the 90-day period will commence when all required items are submitted. Applicants will be notified of deficiencies and given 30 days to complete applications. Applicants will be notified when their application is complete and the 90-day period commences.

19.14(5) Conditions of certification. CNGPs shall comply with the conditions set out in this subrule. Failure to comply with the conditions of certification may result in revocation of the certificate.

a. Unauthorized charges. A CNGP shall not charge or attempt to collect any charges from end users for any competitive natural gas services or equipment used in providing competitive natural gas services not contracted for or otherwise agreed to by the end user.

b. Notification of emergencies. Upon receipt of information from an end user of the existence of an emergency situation with respect to delivery service, a CNGP shall immediately contact the appropriate public utility whose facilities may be involved. The CNGP shall also provide the end user with the emergency telephone number of the public utility.

c. Reports to the board. Each CNGP shall file a report with the board on April 1 of each year for the 12-month period ending December 31 of the previous year.

This information may be filed with a request for confidentiality, pursuant to rule 199—1.9(6). For each utility distribution system, the report shall contain the following information for its Iowa operations:

- (1) The average number of small volume end users served per month.
- (2) The average number of large volume end users served per month.
- (3) The total volume of sales to small volume end users, by month.
- (4) The total volume of sales to large volume end users, by month.
- (5) The revenue collected from small volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.
- (6) The revenue collected from large volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.
- (7) The date the applicant began providing service in Iowa.

d. Each CNGP shall provide to the board on a monthly basis the rates shown on the monthly bill required in 19.14(6)"b" for each customer pricing group.

19.14(6) Additional conditions applicable to CNGPs providing service to small volume end users. All CNGPs when providing service to small volume natural gas end users shall be subject to the following conditions in addition to those listed under subrule 19.14(5):

a. Customer deposits. Compliance with the following provisions of shall apply to customers whose usage does not exceed 2500 therms in any month or 10,000 therms in any consecutive 12-month period.

Customer deposits – subrule 19.4(2)

Interest on customer deposits – subrule 19.4(3)

Customer deposit records – subrule 19.4(4)

Customer's receipt for a deposit – subrule 19.4(5)

Deposit refund – subrule 19.4(6)

Unclaimed deposits – subrule 19.4(7)

b. Bills to end-users. A CNGP shall include on end user bills all of the information listed in this paragraph. The bill may be sent to the customer electronically at the customer's option.

(1) The period of time for which the billing is applicable.

(2) The amount owed for current service, including an itemization of all charges.

(3) Any past due amount owed.

(4) The last date for timely payment.

(5) The amount of penalty for any late payment.

(6) The location for or method of remitting payment.

(7) A toll-free telephone number for the end-user to call for information and to make complaints regarding the CNGP.

(8) A toll-free telephone number for the end-user to contact the CNGP in the event of an emergency.

(9) A toll-free telephone number for the end user to notify the public utility of an emergency regarding delivery service.

(10) The tariffed transportation charges and supplier refunds where a combined bill is provided to the customer.

c. Disclosure. Each prospective end user must receive in writing, prior to initiation of service, all terms and conditions of service and all rights and responsibilities of the end user associated with the offered service. The information required by this paragraph may be provided electronically, at the customer's option.

d. Notice of service termination. Notice must be provided to the end user and the public utility at least 12 calendar days prior to service termination. If the notice of service termination is rescinded, the CNGP must notify the public utility. CNGPs are prohibited from physically disconnecting the end user or threatening physical disconnection for any reason.

e. Transfer of accounts. CNGPs are prohibited from transferring the account of any end user to another supplier except with the consent of the end user. This provision does not preclude a CNGP from transferring all or a portion of its accounts pursuant to a sale or transfer of all or a substantial portion of a CNGP's business in Iowa, provided that the transfer satisfies all of the following conditions:

- (1) The transferee will serve the affected end users through a certified CNGP;
- (2) The transferee will honor the transferor's contracts with the affected end users;
- (3) The transferor provides written notice of the transfer to each affected end user prior to the transfer;
- (4) Any affected end user is given 30 days to change supplier without penalty;and

(5) The transferor provides notice to the public utility of the effective date of the transfer.

f. Bond requirement. The board may require the applicant to file a bond or other demonstration of its financial capability to satisfy claims and expenses that can reasonably be anticipated to occur as part of operations under its certificate, including the failure to honor contractual commitments. The adequacy of the bond or demonstration shall be determined by the board and reviewed by the board from time to time. In determining the adequacy of the bond or demonstration, the board shall consider the extent of the services to be offered, the size of the provider, and the size of the load to be served, with the objective of ensuring that the board's financial requirements do not create unreasonable barriers to market entry.

g. Replacement cost for supply failure. Each individual rate-regulated public utility shall file for the board's review tariffs establishing replacement cost for supply failure. Replacement cost revenue will be credited to the rate-regulated public utility's system purchase gas adjustment.

February 19, 2001

/s/ Allan T. Thoms
Allan T. Thoms
Chairperson